

The Biggest Telecom Developments Of 2020: Midyear Report

By **Kelcee Griffis**

Law360 (July 21, 2020, 5:08 PM EDT) -- The first half of 2020 has been packed with legal and policy developments in the telecom industry, including major moves to keep consumers online during a pandemic, national security crackdowns on Chinese-owned telecom companies and efforts to free up more airwaves for commercial use.

Here Law360 recaps some of the most prominent Federal Communications Commission actions, other regulatory activity and court cases so far this year.

Pandemic Response

As Americans moved to largely working and learning from home in March, both the FCC and internet service providers were under immense pressure to make sure U.S. networks didn't sag under the strain. The FCC also had to think creatively about how to help financially struggling Americans stay online amid the corresponding economic downturn.

While the agency made a lot of smaller adjustments behind the scenes, one of the most high-profile solutions was its voluntary Keep Americans Connected pledge, which stipulates that carriers won't discontinue service based on overdue bills, will waive late payment fees and open Wi-Fi hot spots to the public.

"To the average consumer, the most memorable thing will probably be the Keep Americans Connected pledge," said Ari Fitzgerald, a Hogan Lovells partner who leads the firm's communications practice. "In response to Chairman Pai's request, so many service providers were willing to make that commitment."

Ultimately, about 800 providers signed onto the pledge, which expired at the end of June.

"We'll have to see how many service providers voluntarily adhere to their commitment and for how long," Fitzgerald noted.

The FCC also bent funding and spectrum usage rules to reach more people, allowing carriers to temporarily boost their capacity with unused swaths of spectrum not licensed to them.

"That was also a big help ... especially in the residential areas where we live and currently are working from," Fitzgerald said. "It was seamless to a lot of consumers."

However, Fitzgerald said the FCC still has major issues to address in the latter half of the year, such as ensuring at-home connections for students as they face a virtual fall semester.

"Many of the wealthier school districts can rely on the fact that most of their kids have broadband at home," he said. "The pandemic has really highlighted the divide."

Spectrum Reorganization

The FCC has advanced at least two major spectrum redistribution efforts this year, moving forward with the C-Band satellite spectrum auction slated for December and controversially allowing Ligado Networks to convert its satellite spectrum for mobile 5G service.

These actions are ultimately aimed at helping carriers serve customers with better connectivity and making sure the U.S. keeps pace with global technology competitors, said Ari Bensinger, the head of telecom, media and technology research at the Mitsubishi UFJ Financial Group.

"I'd probably classify it as one of the highest priorities that the FCC has," Bensinger said. "They have to get the spectrum out there if carriers want to start deploying in a notable manner and to lead against China" in the race to deploy 5G.

The FCC has traveled a particularly long road to launch the C-Band auction, including a protracted policy debate over the merits of a private reorganization versus a public auction and heavy congressional scrutiny.

The FCC's February vote on the composition of the public auction plan spurred lawsuits from two groups of challengers that sought to halt the auction — at least until terms more favorable to soon-to-be-displaced users could be hammered out — but the D.C. Circuit opted to let the FCC process proceed while the lawsuits play out.

The FCC was further undeterred by legislation that would've placed guardrails on its rulemaking, showing a determination to get the converted satellite spectrum into the hands of mobile carriers, said Marc Martin, the chair of Perkins Coie LLP's communications industry group.

"I was actually surprised that they moved as rapidly as they did while the Senate was working on legislation on this matter, showing a lot of interest and being critical of what the FCC was considering and ultimately adopted," he said. "The FCC wanted to move on. They wanted to have this auction."

National Security Crackdowns

The FCC and other federal government partners worked overtime in the first half of 2020 to eliminate perceived national security threats to domestic telecom networks, reviewing Chinese companies seeking to do business in the U.S. and demonstrating a willingness to revoke already-granted access.

The Trump administration in April codified the previously informal Team Telecom with an executive order, imposing timelines on member national security agencies that help the FCC assess potential risks of foreign companies that hold or seek to obtain U.S. telecommunications licenses.

"Until recently, the Team Telecom processes weren't written down anywhere, and the executive order

fixes that," said Caroline Brown, a Crowell & Moring LLP partner who specializes in trade and national security matters.

The review body issued a handful of significant recommendations this year, including advising the FCC that it take back China Telecom's authorization to connect with domestic networks and that it nix an undersea direct connection cable between the U.S. and Hong Kong.

"Taken together, the recommendations signal that Team Telecom is taking a tough stance on China projects, particularly those that have Chinese ownership," Brown said. "Applications that may have been approved in the past are now being evaluated differently."

The FCC took things a step further, ordering China Telecom and three other Chinese companies to defend their access to U.S. internet infrastructure.

These market-access decisions are now being evaluated based on the risks that such access might pose to sensitive information that travels over online pathways, according to Brown.

"Telecom is an increasingly complex space that's changing rapidly, and accordingly, Team Telecom is looking at the potential for sensitive data to be exploited and is likely viewing applications through a different lens than it did previously because of that," she said.

Sprint/T-Mobile Merger

The first half of 2020 saw the wrap-up of a transaction that will reshape the telecom landscape: the combination of two of the country's top-four mobile providers.

A D.C. federal judge signed off April 1 on the U.S. Department of Justice deal clearing T-Mobile's purchase of Sprint, the same day the companies closed the massive tie-up after undergoing intense congressional scrutiny and challenges from consumers and state attorneys general.

The arrangement required Sprint to sell its prepaid wireless assets to Dish Network Corp. as part of a broader plan to establish the satellite television company as a fourth national wireless provider.

The divestiture was enough for a New York federal judge to reject the main merger challenge in February, and other challenges ultimately fizzed out with less fanfare.

"From a pure antitrust perspective, I think the case substantively was not that exceptional," said Amanda Wait, a partner with Norton Rose Fulbright, but it was the "procedural issues that made it exceptional and interesting."

For example, the FCC recommended approval of the deal without major divestitures before the DOJ announced it would require selloffs to Dish. Further, the New York court ultimately accepted Sprint and T-Mobile's characterizations of how the merged parties would behave, Wait said — a feat that's much harder to accomplish before regulatory agencies.

"The judge gave so much credibility to the parties' executives. He spent a lot of time in the opinion talking about how the T-Mobile witnesses were getting on the stand and staying, 'This is how we operate,'" Wait said. "That's the uphill battle we fight with the agencies all the time."

--Additional reporting by Bryan Koenig, Anne Cullen and Julia Arciga. Editing by Kelly Duncan.

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